

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FINISAR CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL  
ASSOCIATION, a national banking association,  
not in its individual capacity, but solely in its  
capacity as Indenture Trustee on behalf of all  
Holders of Finisar Corporation's 5¼%  
Convertible Subordinated Notes due 2008, 2½%  
Convertible Senior Subordinated Notes due 2010,  
and 2½% Convertible Subordinated Notes due  
2010, and DOES 1 through 10, inclusive,

Defendants.

Case No. C 07-4052 JF (PVT)

**[PROPOSED] ORDER DENYING  
FINISAR CORPORATION'S  
MOTION FOR SUMMARY  
JUDGMENT**

Date: July 11, 2008  
Time: 9:00 a.m.  
Judge: The Hon. Jeremy Fogel  
Location: Courtroom 3

1 CURRENTLY PENDING before the Court is Plaintiff Finisar Corporation's ("Finisar")  
2 Motion for Summary Judgment ("Motion"). The Court has considered all of the arguments and  
3 supporting materials provided by both of the parties. Finisar's Motion is hereby DENIED, and  
4 the Court finds and adjudges as follows:

5 A. Finisar defaulted under Section 4.02 of the Indentures when it failed to timely file  
6 its financial reports with the SEC and those defaults have matured into Events of Default under  
7 the Indentures;

8 B. Because Finisar has not obtained a waiver of the defaults from the holders of the  
9 Subordinated Notes, the Events of Default have not been cured by Finisar and are continuing;

10 C. The Events of Default entitle U.S. Bank to accelerate the Subordinated Notes  
11 under Section 6.02 of the Indentures;

12 D. Section 7.06 of the Indentures obligates Finisar to pay U.S. Bank's fees and  
13 expenses in connection with this Action and as a result of the Events of Default; and

14 E. Finisar is obligated to pay U.S. Bank's outstanding, unpaid fees and expenses  
15 immediately.

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18 DATED: \_\_\_\_\_  
19

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21 HON. JEREMY FOGEL  
22 United States District Judge  
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